

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.922 of 2015

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Ram Sumer Sharma Son OF Shri Bhubneshwar Singh R/o Village- Dhandhar Bigha, P.S.- Kalpa, District- Jehanabad. Presently working as Deputy Superintendent, District Jail, Katihar, District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary to the Government, Prison and Reforms Services, Inspectorate, Home Department, Government of Bihar.
2. The Principal Secretary to the Government, Prison and Reforms Services, Inspectorate, Home Department, Government of Bihar.
3. The Inspector General of Police, Prison and Reforms Services, Inspectorate, Home Department, Government of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Advocate
Ms. Ritika Rani, Advocate

For the Respondent/s : Mr. Anil Kumar Verma, AC to AAG 9

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 07-05-2018

Heard learned counsel for the petitioner and the respondent State.

2. Right from communication of charge memo dated 01.02.2013 on 'Prapatra Ka' issued by the office of the Inspector General of Police (Prison) (for short 'I.G'), the petitioner has been raising the issue that the charge memo has not been framed by the competent authority.

3. It is submitted that the charge memo was in violation of Article 311 of the Constitution of India as also the provisions



contained in Rule 17(14) of the Bihar CCA Rules. It is also submitted that bare perusal of the charge memo itself shows that the same has been signed by the Superintendent of Central Jail, Madhubani and co-signed by the District Magistrate, Madhubani. However, the charge memo, 'Prapatra Ka' communicating the charges against the petitioner dated 01.02.2013 has not been signed by the I.G. Prison, Bihar, Patna who is admittedly the disciplinary authority of the petitioner.

4. Submission is made that from bare perusal of the letter dated 02.02.2013 brought on record by the respondent-State in its supplementary counter affidavit, it would be clear that the authorities inferior to the I.G. Prison being the District Magistrate, Madhubani has in fact taken a decision with respect to the charges to be framed against the petitioner.

5. Referring to the file notings produced by the respondent-State in the supplementary counter affidavit (Annexure E), counsel for the petitioner has pointed out that when the matter was referred to the Disciplinary Authority, i.e. I.G. Prison for initiation of proceedings against the petitioner in respect to allegations of his negligence and dereliction of duty, he in his notings dated 19.03.2013 which is last noting has directed that proposal may be put up for framing of charge. Beyond that there is nothing on record to show that the proposal for



framing of charges had actually ever been placed before the I.G. Prison or that the I.G. Prison had approved the charge memo on 'Prapatra Ka' which was communicated to the petitioner.

6. It is submitted that in fact there is no approval of the I.G. Prison and the charge memo has not been signed by the I.G. Prison as is clear from Annexure E to the supplementary counter affidavit filed on behalf of the respondent State. Neither the decision in respect of the charges being framed has been approved by the I.G. prison nor the charges as communicated under 'Prapatra Ka' has been signed by the I.G. Prison who is the competent authority to initiate proceedings against the petitioner. He submits that in view of the aforesaid submission the charge memo is *non est* being violation of Article 311 of the Constitution of India as also Rule 17 (14) of the Bihar CCA Rules.

7. Counsel for the respondent, on the other hand, has submitted that from the order dated 13.09.2012 and read with the notings dated 19.03.2013 (Annexure E) to the supplementary counter affidavit, it is quite evident that the competent authority has approved the charges to be communicated to the petitioner. Therefore, merely for the fact that signature of the competent authority is missing on the charge memo, it cannot be concluded that the competent authority had not approved or framed the charges against the petitioner in as much



as missing signature is merely an error of inadvertence which cannot enure to the benefit for the petitioner.

8. Bare perusal of Annexure E which contains the last notings dated 19.03.2013 of the competent authority being the I.G. prison shows that the last decision of the competent authority was only to put up a proposals of the charges which were to be framed against the petitioner. Nothing has been placed on record to show that the same was actually placed before the I.G. Prison, i.e. Disciplinary Authority pursuant to the said notings and that the competent authority (I.G. Prison) has approved the specific charges to be communicated against the petitioner. As such the missing signature on the charge memo (Prapatra ka) is not an error. Clearly the decision is not that of the competent authority being the I.G Prison.

9. In view of the aforesaid submissions which has been raised by the petitioner during course of the proceedings, the validity of the entire proceedings conducted against the petitioner leading to award of the punishment of censor, withholding of two increments with cumulative effect and denial of allowances other than subsistence allowance for the period of suspension becomes dependent upon the validity of the charge memo itself.

10. As noticed above the charge memo has neither been approved nor issued by the competent authority being the I.G. Prison.



11. Counsel for the petitioner has thus rightly relied upon the decision of the Apex Court in the case of ***Union of India vs. B.V Gopinath*** reported in **2014 (1) SCC 351**. This Court, taking note of the law laid down with respect to non-issuance of charge memo by the competent authority, is held as follows :

“55. Although number of collateral issues had been raised by the learned counsel for the appellants as well the respondents, we deem it appropriate not to opine on the same in view of the conclusion that the charge-sheet/charge memo having not been approved by the disciplinary authority was non est in the eye of the law.”

12. Since the petitioner's case is squarely covered by the said judgment, this Court has no hesitation in holding that the charge memo dated 01.02.2013 (Annexure D) to the said supplementary counter affidavit has not been issued by the competent authority and as such the same is *non est* in the eyes of law.

13. In view of the said findings, the entire proceedings arising out of such *non est* charge, is unsustainable and is therefore, declared illegal. This Court would therefore, quash the office order dated 03.09.2014 bearing memo no. 4794 by which the punishment has been awarded against the petitioner. In view of the entire proceedings have been declared invalid, the appellate order bearing memo no 6724 dated 29.12.2014 is also unsustainable in the eye of law and is quashed. Since the issue has been decided on the basis of



charge memo being incompetent and without jurisdiction, it would be open to the respondent authorities to proceed afresh after a conscious decision of the competent authority / Disciplinary Authority in respect of the charge to be framed by the competent authority.

14. The writ petition is allowed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

